

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

85 FLATBUSH RHO MEZZ LLC, et al.,
Debtors.

85 FLATBUSH MEZZ LLC,
Plaintiff,

- against -

TH HOLDCO LLC as assignee of 85 Flatbush Avenue 1 LLC, in its capacity as the Debtor's Prepetition mortgage lender to 85 Flatbush RHO Hotel and 85 Flatbush RHO Residential,

Defendant.

Return Date: August 10, 2022,
2:00 p.m.

Responsive Papers: Aug. 3, 2022

Chapter 11
Case No.: 20-23280-RDD

Adversary Proceeding
Case No. 7:22-ap-07022-RDD

**DECLARATION OF
EMILIE B. COOPER**

EMILIE B. COOPER declares under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am a member of the law firm of Fried, Frank, Harris, Shriver & Jacobson LLP, attorneys for defendant TH Holdco LLC ("TH Holdco") in the above-captioned adversary proceeding (the "Adversary Proceeding"). I am fully familiar with the facts and circumstances described herein based on upon my personal knowledge, including but not limited to my direct participation in this matter and review of the documents attached hereto. I respectfully submit this declaration to place before the Court certain documents that are cited in TH Holdco's Memorandum of Law in Support of its Motion for Judgment of the Pleadings Pursuant to Fed. R. Civ. P. 12(b)(1), (c), and (h)(3).

2. Attached hereto as Exhibit 1 is a true and correct copy of the Intercreditor Agreement, dated September 19, 2019, between 85 Flatbush Avenue 1 LLC, as Senior Lender, and plaintiff 85 Flatbush Mezz LLC (“Mezzanine Lender”), as Mezzanine Lender, a copy of which was annexed as Exhibit A to Mezzanine Lender’s complaint in the Adversary Proceeding (Dkt. No. 1) (the “Complaint”).

3. Attached hereto as Exhibit 2 is a true and correct copy of the transcript of the May 16, 2022 hearing in the jointly administered bankruptcy proceedings captioned as *In re 85 Flatbush RHO Mezz LLC et al.*, Case No. 20-23280-rdd (the “Bankruptcy Proceedings”) (Bankr. Dkt. No. 209).

4. Attached hereto as Exhibit 3 is a true and correct copy of the Complaint, without accompanying exhibits.

5. Attached hereto as Exhibit 4 is a true and correct copy of the answer filed by TH Holdco in the Adversary Proceeding on April 4, 2022 (Dkt. No. 6).

6. Attached hereto as Exhibit 5 is a true and correct copy of the July 16, 2020 notice to Mezzanine Lender, a copy of which was annexed as Exhibit B to the Complaint.

7. Attached hereto as Exhibit 6 is a true and correct copy of Mezzanine Lender’s objection to TH Holdco’s disclosure statement, dated March 24, 2022, filed in the Bankruptcy Proceedings (Bankr. Dkt. No. 160).

8. Attached hereto as Exhibit 7 is a true and correct copy of the transcript of the April 6, 2022 hearing in the Bankruptcy Proceedings (Bankr. Dkt. No. 186).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
June 27, 2022



Emilie B. Cooper